

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

AUTOMOTIVE PROFIT BUILDERS, INC.,

Plaintiff,

vs.

AUTOMOTIVE PROFIT BUILDERS, INC.,
and PHILLIP P. WILLIAMS, d/b/a
AUTOMOTIVE PROFIT BUILDERS and/or APB

Defendants.

Civil Action No.:

04 - 10790 GAO

AFFIDAVIT OF RICHARD F. LIBIN

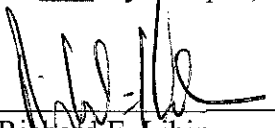
The undersigned, being duly sworn, does hereby depose and swear under oath as follows:

1. I am over the age of eighteen and believe in the obligations of an oath.
2. I have personal knowledge of all the facts set forth herein.
3. I am the President of Automotive Profit Builders, Inc. ("APB-MA"), a Massachusetts corporation located in Framingham, Massachusetts.
4. For over thirty six years, APB-MA has been extensively promoting its business of assisting automotive dealerships to sell and service automobiles, throughout North America and South America.
5. In 1968, APB-MA adopted the name Automotive Profit Builders for its services and has been promoting such services in this state and elsewhere under the trade names and service marks Automotive Profit Builders, Inc., Automotive Profit Builders, and APB (collectively "trade names").

6. APB-MA has also extensively promoted the Automotive Profit Builders trade name and service marks throughout the United States by reason of various national events which are conducted by APB-MA.
7. As a result of APB-MA's substantial advertising and promotional efforts, APB-MA has become widely known to consumers as the source of services and products bearing the trade names. The trade names are widely recognized by consumers as being associated with APB-MA's high quality services and has become synonymous with the goodwill and reputation of APB-MA.
8. APB-MA's trade names have also been widely recognized by automotive dealerships throughout North and South America, providing training, a teleconsulting support system, data collection, analysis and a structured plan for selling and servicing vehicles.
9. APB-MA has obtained federal registrations of various marks, including Automotive Profit Builders, Inc.
10. APB-MA has also registered an internet site utilizing the name Automotive Profit Builders in an effort to ensure that persons seeking information concerning APB-MA could readily locate the appropriate home site on the Internet.
11. Recently, I was contacted by a client who informed me that he had seen one of my advertisements in a local paper while visiting Florida. I asked for a copy of the advertisement and informed him that despite the exact name, the company advertising was not my company and was not associated with my company in any way. I have come to find out that several advertisements are appearing throughout the country for a company with the name Automotive Profit Builders, Inc. that is wholly unrelated to my company and that the name Automotive Profit Builders is being used without my consent and without my knowledge until recently.
12. I have come to find out that there is a company in Florida ("the Defendants") which is advertising using the name Automotive Profit Builders, which appropriates the well known mark and trade name of APB-MA.
13. The Defendants have advertised, marketed, distributed and/or provided services which infringe APB-MA's rights.
14. As a result of the Defendants' use of the trade names, my customers and others have confused and will continue to confuse products and services offered by the Defendants with products and services offered by APB-MA.
15. On or about February 5, 2004, my counsel sent a cease and desist letter to the Defendants. The Defendants have refused to discontinue its trademark infringement.

16. APB-MA has not authorized the Defendants to utilize its trade name and mark in any manner.
17. The use of the Automotive Profit Builders names improperly obtained by the Defendants to advertise companies not associated with APB-MA improperly suggests association or sponsorship or endorsement of the advertising entities by APB-MA.
18. If the Defendants are permitted to continue advertising, marketing, distributing and providing services under the federally protected trade name of Automotive Profit Builders, APB-MA will be harmed in a way that money will not alone be able to adequately address.

Signed under the pains and penalties of perjury this 16 day of April, 2004


Richard F. Libin

Notary Public

My Commission Expires: